

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 94-0370 CSET

**CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

Authority: IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana (1995)(Indiana Supreme Court).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested on March 2, 1994 for possession and dealing in marijuana. The police report indicates that Taxpayer admitted that he possessed marijuana and dealt in the substance. The Indiana Department of Revenue issued a "Record of Jeopardy Finding, Jeopardy Assessment, Notice and Demand" on April 8, 1994. Taxpayer protested the assessment. Taxpayer was notified of the hearing by mail on May 8, 1998. On May 19, 1998 Taxpayer admitted receipt of the hearing notification and requested a possible settlement amount. On May 26, 1998 Taxpayer was given an approved settlement amount. Taxpayer never accepted the settlement. Taxpayer did not appear at the scheduled hearing. Taxpayer did not face criminal charges until after the April 8, 1994 jeopardy assessment date.

Controlled Substance Excise Tax-Double Jeopardy.

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of Marijuana in the State of Indiana. The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana (1995)(Indiana Supreme Court). In the instant case, Taxpayer was put at risk of punishment or in jeopardy by the "Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand" prior to the jeopardy in the criminal action. Therefore, Taxpayer is liable for the tax as assessed.

FINDING

Taxpayer's protest is denied.